

Serial Number 09/548,910**PATENT**
IBM Docket No. RAL9-00-0014**REMARKS**

This amendment is in response to the Office Action mailed July 17, 2003.

Applicants take note of the provisional obvious type double patenting rejection of claim 2 based upon claim in co-pending patent application serial number 09/548,912 and 09/548,907. In view of the fact that no claims is yet allowed in any of the applications applicants request that the filing of a Terminal Disclaimer in any of the applications be delayed until claims are allowed in any one of the applications. Then a Terminal Disclaimer can be filed in subsequent allowed cases, if the situation at that time warrants such a filing.

The Examiner objects to claim 2 on the grounds that "from" in line 14 is not proper. The Examiner suggests that "from" be changed to -- to -- . In response, the claims is amended including the Examiner's suggestion.

Claim 2 is rejected under 35 USC 102(e) as being anticipated by Ohba (U. S. Patent 6,101,193). The amended claims call for prioritized calendars, some being time-based and some being non-time-based. In Ohba the scheduling unit 42 consists of queues. There is no teaching or suggestion in Ohba to use calendars as set forth in the amended claim. It is settled law that in order for a reference to anticipate a claim every element recited in the claim has to be present in a single reference. Because Ohba failed to disclose the use of calendar as is set forth in claim 2 Ohba does not anticipate claim 2 which should be allowed.

Claim 1 is rejected under 35 USC 103(a) as being unpatentable over Pillar et al. (U.S. Patent 6,438,106) in view of Steme et al. (U.S. Patent 5,818,839). The Examiner in

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reaching this opinion compared each element in applicants' claim with Sterne and concluded that except for the timer all the elements in applicants' claim are present in the Pillar et al. reference. The Examiner then relies on Sterne for teaching the timing feature of applicants' claim and concludes that it would be within the skill of the art to combine these two references to render applicants' claim obvious.

In response, applicants respectfully disagree with the Examiner and argue that the Examiner's conclusion that Pillar (U.S. Patent 6,438,106) teaches the calendar type as set forth in applicants' claim 1 appears to be in error. In particular, applicants argue Pillar does not show or suggest calendar for scheduling much less partitioning the calendar into different types as set forth in applicants' claim. The Pillar reference in Figures 1 and 5 discloses high priority connection schedulers and low priority connection scheduler. See column 5, lines 30-35, and column 6, lines 59-67. However, the reference does not define or identify what these connection schedulers may be. Moreover, the Examiner has not shown any art that identifies different types of calendars which can be used for scheduling as set forth in claim 1. Failure of the primary reference to identify the scheduler type and failure of the Examiner to identify art that provides the scheduler type as set forth in applicants' claim 1 suggest that the Examiner is relying on the teaching of applicants' disclosure to form the combination. Reliance on an applicants' disclosure to form a combination to render applicants' claim obvious is and has always been prohibited. As a consequence the Examiner has not proffered a prima facie case of obviousness, as required by statute. Therefore, claim 1 is not obvious.

In addition, applicants argue that there is no teaching in the reference that suggests the fourth calendar as set forth in applicants' claim. Arguably, column 6, lines 60-65, of the '106 patent discloses the following: "if the scheduler detects the traffic for a given class exceeds predetermined GCRA-measured limits (such as for example excessively bursted

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traffic that exceeds the peak rate and/or burst tolerance of the GCRA) the scheduler reduces the priority according to the class until the traffic for that class returns to a value within the GCRA-measured limits". This language merely suggests relegating a high priority traffic to low priority if the high priority connection exceeds the given amount. The primary reference fails to teach how this reduction is done much less to use a specific structure calendar as is set forth in applicants' claim. In summary, applicants argue that the primary reference U.S. Patent 6,438,106 fails to disclose the various structure (calendar) as set forth in the claim. As a consequence, the Examiner's characterization of the reference appears in error and as a result erroneously concludes that the combination render applicants' claim obvious.

In addition, applicants argue the Examiner's combination between U.S. Patent 6,438,106 and 5,818,839 is improper in that there is no basis in the reference for the combination. For example, in the '106 patent there is no need for a timer to move information based upon stored rules and calendar search. As argued above and incorporated herein by reference the use of calendar in the way set forth in the claim is not suggested in any of the references. As a consequence, an artisan viewing the teaching of these references would not form the combination that would render applicants' claim obvious. It is settled law that references can only be combined to render a claim obvious if one of the references suggest the combination and/or the Examiner set forth logical and concrete reasons why an artisan viewing these teachings would form the Examiner's combination. As argued above the teaching of the primary reference does not meet the terms of applicants' claim. The secondary reference does not correct the problem identified in the main reference. Therefore, even after the Examiner's combination the resulting reference would not render claim 1 obvious.

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Newly added claims 3-15 are patentable over the art of record for the reasons set forth above.

It is believed that the present amendment answers all the issues raised by Examiner. Reconsideration is hereby requested and an early allowance of all claims is respectfully solicited.

Respectfully Submitted,



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